

Contribution to the 2016 Open Consultation of the ITU CWG-Internet

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Abstract

States have a general obligation to facilitate access to ICTs, including the Internet, by people with disabilities. This obligation flows both from general UN treaties and from ICT-specific instruments such as the 2012 International Telecommunication Regulations (ITRs), resolutions of the World Telecommunications Standardization Assembly, and ITU Recommendations.

A significant number of states did not sign the ITRs in Dubai in 2012. Almost all of those states indicated that they required additional time in order to consider the implications of certain provisions, in particular those that were approved at the last minute.

Accession to the ITRs will facilitate access to Internet by persons with disabilities, and accession by non-signatories would appear feasible because legal analysis of the provisions that required further consideration indicates that they do not actually have the effects that had raised concerns during the conference in Dubai. For greater clarity, we propose a declaration that can be made by states that accede to the ITRs.

1. Background and Introduction

On 2 October February 2015 the Council Working Group decided that Open Consultations would be convened on the following issue:

Access to the Internet for Persons with Disabilities and specific needs

- What are the different challenges facing persons with disabilities and specific needs (e.g. lack of ICT skill sets etc.) in accessing and using the Internet?
- What possible approaches and examples of good practices are available to address these challenges?
- What are the gaps in addressing these challenges and how can these gaps be filled?
- What is the role of governments in addressing these challenges and gaps?

This contribution focuses on the role of governments in ensuring access to the Internet for persons with disabilities and specific needs. It argues that accession to the 2012 International Telecommunication Regulations (ITRs) will help to facilitate access to the Internet for persons with disabilities and specific needs.

2. Overall obligations

States have a general obligation to facilitate access to ICTs, including the Internet, by people with disabilities. This is enunciated as follows in Article 9 of the Convention on the rights of persons with disabilities (emphases added):

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to

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other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b. Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c. Provide training for stakeholders on accessibility issues facing persons with disabilities;
- d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

3. Specific obligations

Article 12 of the 2012 International Telecommunication Regulations (ITRs) states:

Members States should promote access for persons with disabilities to international telecommunication services, taking into account the relevant ITU-T Recommendations.

Those recommendations include E.121, E.123, E.135, E.138, E.139, V.18, V.151, V.254, T.134, T.140, H.323 Annex G, H.248.2 and F.790; but provisions regarding accessibility are found in many other ITU-T Recommendations.

By acceding to the ITRs, states agree to take steps to facilitate access to the Internet by people with disabilities and specific needs, and national parliaments agree to implement appropriate mechanisms within national legal frameworks. Thus accession will facilitate access to the Internet.

Resolution 70 of the World Telecommunications Standardization Assembly is also relevant. Its operative part invites Member States:

- 1 to consider developing, within their national legal frameworks, guidelines or other mechanisms to enhance the accessibility, compatibility and usability of telecommunication/ICT services, products and terminals;

- 2 to consider introducing telecommunication relay services² to enable persons with hearing and speech disabilities to utilize telecommunication services that are functionally equivalent to telecommunication services for persons without disabilities;
- 3 to participate actively in accessibility-related studies in ITU-T, ITU-R and ITU-D, and to encourage and promote self-representation by persons with disabilities in the standardization process so as to ensure their experiences, views and opinions are taken into account in all the work of study groups;
- 4 to encourage the provision of differentiated and affordable service plans for persons with disabilities in order to increase the accessibility and usability of telecommunications/ICT for these persons;
- 5 to encourage the development of applications for telecommunication products and terminals to increase the accessibility and usability of telecommunications/ICT for persons with visual, auditory, verbal and other physical and mental disabilities;
- 6 to encourage regional telecommunication organizations to contribute to the work and consider implementing the results achieved in the study groups and the workshop on this topic.

4. The 2012 ITRs

A significant number of countries did not sign the International Telecommunications Regulations (ITRs) in Dubai in 2012. Almost all of those countries indicated that they required additional time in order to consider the implications of certain provisions, in particular those that were approved at the last minute. Accession by non-signatories would appear feasible because legal analysis³ of the provisions in question indicates that they do not actually have the effects that had raised concerns.

However, interpretation of treaties is the sovereign right of states, so it may be desirable for non-signatories to clarify the implications of the controversial provisions of the ITRs by issuing a statement upon accession to the ITRs.

Many non-signatories⁴ stated, at the closing session of the World Conference on International Telecommunications (WCIT) that they reserved their right to make reservations upon accession. These states can issue a statement in the form of a formal reservation.

States that did not expressly reserve their right to make reservations cannot now make a formal reservation, however they can make a unilateral declaration which, in practice, would have an effect similar to that of a formal reservation.

² Telecommunication relay services enable users of different modes of communication (e.g. text, sign, speech) to interact by providing convergence between the modes of communication, usually through human operators.

³ See Hill, Richard (2013) "WCIT: failure or success, impasse or way forward?", *International Journal of Law and Information Technology*, vol. 21 no. 3, p. 313, DOI:10.1093/ijlit/eat008; and Hill, Richard (2013) *The New International Telecommunications Regulations and the Internet: A Commentary and Legislative History*, Schulthess/Springer

⁴ In particular, 18 members of the European Union: Austria, Croatia, Cyprus, Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal Slovak Republic, Slovenia, Spain.

Thus it is proposed that non-signatories of the ITRs consider acceding to the ITRs while possibly issuing a statement (reservation or declaration) along the following lines:

[NAME OF STATE] accedes to the International Telecommunication Regulations (Dubai, 2012), with the understanding that:

a) The third paragraph of the Preamble, which recognizes the right of access of Member States to international telecommunication services, does not limit or otherwise prejudice the right of Member States to suspend the international telecommunication service, pursuant to Article 35 of the ITU Constitution, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit. Furthermore, the Preamble does not contain operative provisions and therefore it does not modify existing rights and obligations.

b) As specified under number 4 (Article 1.1a), these Regulations do not address the content-related aspects of telecommunications. This understanding applies to all provisions of the ITRs, including in particular Article 6 on Security and robustness of networks, and Article 7 on Unsolicited bulk electronic communications.

c) Number 5 (Article 1.1b), which specifies that these Regulations also contain provisions applicable to authorized operating agencies, aligns the Regulations with number 38 (Article 6) of the ITU Constitution and thus does not change the scope of the Regulations regarding the entities to which they apply. Furthermore, the area covered by the Regulations, as defined in article 1, has not been changed. Thus the scope of the Regulations has not been changed compared to the 1988 version of the Regulations.

d) Resolutions contained in the Final Acts of the World Conference on International Telecommunications (Dubai, 2012) are not part of these Regulations. They do not require any ratification, acceptance or approval by individual Member States, and they are not inherently binding on Member States. We make this declaration especially in the context of Resolution 3 on Fostering an enabling environment for the greater growth of the Internet. In doing so, we reiterate our support for a multi-stakeholder approach to Internet governance. Furthermore, we state that the cited Resolution cannot and does not change the mandate of the ITU.
